THE EFFECT OF THE MEMBERSHIP OF THE EUROPEAN COMMUNITY UPON THE NATIONAL LEGAL SYSTEMS

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Introduction

As Malta is bracing herself up for the membership of the European Community it seems timely to reflect upon the effects of the membership on the national legal systems. Politicians and economists face a challenge of this new venture in their own fields but lawyers, apart from the challenge, have to prepare themselves for a mighty shock to the national system. The waves of this shock will reverberate throughout the whole system for membership means more than a new political alignment or adjustments of economic policy or trade rules.

It is so because the EC is a "new legal order in International Law embracing not only the member states but also their citizens" (Case 26 / 62: *Van Gend* v *Nederlandse Administratie der Belastingen* (1963) ECR 1 at 29). It has been established by law and it is governed by law, hence the tendency towards a legalistic bureaucracy in the management of its affairs.

Behind the political ideal of a European Union, still on the far horizon, lies the hard economic reality because political integration is to be achieved through economic integration. The law plays a vital role in this process since it is used as the instrument of defining economic policies and the machinery for their enforcement. Thus legal integration forms a part of this process.

Although set on a federal course the Community is still searching for its constitution and no-one can be sure what form will this unprecedented political animal take. Probably it will be like a camel – a strange-looking creature – as if it had been designed by a committee of politicians rather than the Almighty, though to insist on that might suggest that God has no sense of humour. He has, but his absence marks the debates about the future of the Community in as much as some have said, in the Catholic Church, that the Holy Spirit forgot to attend Vatican II.

The controversy about the future of the Community reflects two broad questions, i.e. whether the Community should be a Community of peoples disregarding national boundaries and state sovereignties or the Community of sovereign states acting in harmony for the good of the European Continent from the straits of Gibraltar to the Urals. The other aspect of the controversy

reflects the methods to be applied in order to achieve the desired effect. Here we can see a sharp conflict between the evolutionary-pragmatic approach favoured mainly by Britain and Denmark and a doctrinaire-formalistic approach championed at present mainly by France and Italy. Assuming that both wish the same, i.e. a united Europe, the difference seems more in the means and the timing of the action than in the ultimate objective. Both reflect different historical experiences and different constitutional methods. The British approach, insisting on a gradual development moving step by step in accordance with the programme laid down in the Treaties, lacks the drama and the rhetoric of the Latin races but can claim a realistic stance since the politics is the art of the possible. Therefore it insists on the completion of the internal market, now set for the end of 1992, and the development of a common foreign policy alongside the defence rather than embarking on a written constitution devised by University professors. Recent events have, at least partially, vindicated this approach. Countries which advocate a high speed of the political integration tend to lag behind when it comes to the implementation of their duties. Indeed the record of enforcement actions taken against these countries before the Community Court belies their "pro-European" commitment. Events in Eastern Europe have changed the rules of the game. There seem to be no longer two hostile blocs facing each other menacingly but a new opportunity to work together and to turn, as it were, swords into ploughshares. NATO too will have to change and adopt a new role. All this requires consolidation of the EC in face of the need of a massive economic aid to foster the revival of democracy in Eastern Europe.

The rape of Kuwait and the Middle East crisis, echoing the pre-1939 anxieties, has exposed the weakness of the EC as a collective would-be world power. Some countries, like for example Britain, vigorously responded to the challenge but others were slow in showing an effective support for the United Nations' resolutions condemning Iraq's aggression against Kuwait and ordering sanctions. The Community collective response was feeble as it was limited to a vocal condemnation of Iraq. Under the presidency of Italy it exposed itself as a muscular but headless body, thus proving that it is, at present, an economic giant but a political dwarf.

It is clear that, in order to fulfil its historical purpose of uniting the Continent the Community must maintain a dynamic momentum. However it is a chicken and egg dilemma whether the Community should adopt out of the blue, as it were, a federal constitution signalling the demise of the sovereign state or build upon the existing institutions and, by reforming itself, gradually find, by experience, the most appropriate form of government. It seems that the latter is the right way. Therefore I do not expect any dramatic results from the Intergovernmental Conference to be held in December in Rome under the Italian presidency, though some improvement in the cumbersome decision-making process, a better co-operation in economic and monetary policy and the much needed implementation of the Treaty provisions on the political co-operation in the sphere of foreign policy (E.P.C.) may emerge. Besides, there is still the unfinished business of the internal market which raises a delicate

question of improving the machinery for the enforcement of the member states' obligations.

However, whatever the prognostications, we are witnessing an exciting and positive development of the old Continent though it is confined at present to twelve countries only with the danger that the Community may become a cosy, selfish and self-centered club. What should the outsiders do? I think they should join, for the future of the Community is their future too and the future of the whole Continent. The price of joining is, as we shall see, a substantial surrender of their sovereignty in exchange for active participation in the decision-making process. Apart from the economic benefits of the enlarged internal market few countries can expect direct financial benefits for somebody has to pay for the common policies and, in this world, there are very few cheerful givers.

The process of admitting new members is a formal one. After the application to the Council of Ministers and a positive opinion of the Commission the Council decides by a unanimous vote after receiving the assent of the European Parliament acting by an absolute majority. There is no automatic admission even for countries which have enjoyed the status of association (See Commission opinion on the admission of Turkey, December 1989) like for example Malta since 1971. According to the Treaties (EEC Art.237, amended by Single European Act, Art.8, Euratom Art.205; ECSE Art.98) the only qualification required is that the applicant is a "European" country but in practice, further unwritten conditions have been applied, namely that the applicant is a parliamentary democracy and is willing and able to carry out the obligations arising from the membership. Still further qualifications from the unsuccessful application of Turkey have emerged, i.e. that the applicant's economy has been aligned to that of the Community, that it has a good record of human rights and no quarrels with the existing members.

Malta eminently fulfils the condition but admission like the application is a political decision and here you never know who your real friends are. One of the problems Turkey had to face were the competing interests of the Mediterranean countries which do enjoy a substantial support of the Community. Let us hope that no such problem will arise in the case of Malta and that the decision will be taken on merit. Let us turn now to the effects of accession to the Community.

Community Solidarity and State Duties

The Treaty of Accession and the Act of Accession which, in legal terms, embody the results of the negotiations for membership are *sui generis* international instruments. They bind the acceding state, the Community and the existing member states into a collectivity which is set on a course of development towards a federal system. The process seems irreversible since the founding Treaties (with the exception of the Treaty setting up the Coal and Steel Community) have been concluded for "an unlimited period" and there

is no provision for withdrawal or expulsion. It is assumed, therefore, that members shall work together in harmony to carry out the objectives of the founding Treaties and strive for the ideal of the European unity. This is implied in the "solidarity" clauses of the Treaties *(EEC art 5; Euratom art 192; Coal and Steel art 86)* whereby the member states undertake to take all appropriate measures to fulfil the obligations arising from the Treaties and to refrain from any measures which could jeopardize the attainment of these objectives.

Next to solidarity the Treaties *(EEC art 7; Euratom arts 96 and 97; Coal and Steel art.69)* impose upon the member state a general duty of non-discrimination on the ground of nationality which affects not only relations between them, especially as regards track and the protection of ratio and national interest but also the rights of individuals. Moreover, coupled with the social provisions of the Treaty, the principle of non-discrimination has been developed by the jurisprudence of the Community Court to the extent of censuring national laws which permit discrimination between men and women (See e.g. Cases 61 / 81: Commission v United Kingdom (1982) 3CMLR 284; Case 165 / 81: (1984) ICMLR 44 and Case 248 / 83: *Commission* v *Germany* (1986) 2CMLR 588; Case 163 / 82: *Commission* v *Italy* (1984) 3CMLR 169. The member states whose national laws discriminate between men and women in areas covered by the Treaties (e.g. employment and social security) have to adjust their legislation accordingly.

The principle of non-discrimination on the ground of nationality applies to all persons in all situations covered by Community law. Therefore, for example, a British tourist attacked and injured in France could not be denied compensation under the French scheme which provided compensation for the victims of crime but limited it to French citizens only (Case 186 / 87: *Covan* v *Tresor Public* (1990) 2CMLR 613.

Membership of the Community entails a complex and extensive system of state duties which is essential to the legal concept of the Community. These duties are both general *(e.g. solidarity)* and non-discrimination and specific, laid down in detail in the Treaties and consequential legislation. Some are positive *(e.g. to enact laws for consumer protection)* others negative *(e.g. to refrain from discriminatory taxation of goods imported from another member state)*. Certain duties are explicit, others are implied. Explicit duties are expressed in the form of a command *(e.g. that customs duties are to be abolished)* whilst implied duties can be inferred from the provisions of the Treaties which envisage a certain action *(e.g. adjustment of obligations arising from treaties with non-member countries)* or control of the state apparatus in its executive, legislative and judicial functions in order to facilitate the execution of explicit duties. Thus the executive must adopt the administrative measures necessary to carry into effect the Community policies; the legislature must enact the laws necessary to be in line with Community policies and the courts must ensure not only the correct application of Community law but also the legal protection which individuals, whether the citizens of a member state or the nationals of another member state, derive from Community law.

There is also an implied duty of vigilance exemplified by the right of the member states to challenge the validity of acts of the Community institutions (whether legislative or administrative) even if they have been party to the act in question *(e.g. a regulation made by the Council of Ministers)*. Such challenge can be taken on the grounds of lack of competence, misuse of powers, breach of Community law or of an essential procedural requirement. This enabled recently the United Kingdom to obtain annulment of two directives, one for the use of agricultural hormones in cattle fodder and another providing for minimum standards for the comfort of battery hens. In both cases the text of the directive differed from the version on which the vote was taken, the irregularities having been perpetrated in the secretariat of the Council (Case 68 / 86: *U.K.* v *Council* re Agricultural hormones (1988) 2CMLR 543 and Case 131 / 86: *UK* v *Council,* re battery hens (1988) 2CMLR 364).

The relations between the member states in areas covered by the Treaties are not governed by the classical rules of International law but by the Treaties establishing the three Communities which together form the Constitution of the European Community. Thus in the policital sphere the member states are committed to the European Political Co-operation which entails the co-ordination of national policies relevant to the Community; they participate in the Community Institutions in accordance with the Treaty provisions and provide personnel for the Community civil service. In the economic sphere they undertake to co-ordinate their national economic policies within the Treaty framework and in accordance with the decisions of the Community institutions in which they participate. Even in the social sphere the member states assume certain duties, i.e. the general duty of non-discrimination and specific duties entailed in the freedom of movement of workers and self-employed persons coupled with the provision of social benefits for Community citizens as well as the protection of fundamental human rights regarded as one of the general principles of Community law.

The member states assume, of course, financial responsibility for the cost of the running of the Community and its policies. Thus they have to contribute to the Community budget whose main source of revenue are the Community "own resources" consisting primarily of the common customs tariff duties and a proportion of the value added tax which is a system of internal taxation levied according to common rules.

Enforcement of Member States' Duties

The Community is founded on the rule of law applicable to the member states and their citizens alike. The member states have undertaken unconditionally and without reservation the obligation of submitting the differences arising from the interpretation and application of the Treaties to the jurisdiction of the Community Court *(EEC art.219; Euratom art.193; Coal and Steel art.87)*. By expressly renouncing any other method of solving disputes between sovereign states they have submitted their conduct to the judicial

control of one of the Community institutions. This constitutes an authority far exceeding the rules hitherto recognized in classical International law (Case 25 /59: Netherlands v High Authority (1960) ECR 355).

Having submitted their differences to compulsory adjudication by the Community Court they have also delegated the power of enforcement to the Commission *(EEC art.169; Euratom art.141; Coal and Steel art.88)* acting as the ''guardian of the Treaties''. The Commission acts either on its own initiative or upon hearing complaints from another member state or even from individuals. The Commission acts according to a set procedure first investigating the allegations and then trying to settle the matter directly with the state concerned. If it considers that the state is in breach of a duty it will deliver a reasoned opinion stating the charge and enjoining the state to comply. In the event of non-compliance it must institute enforcement proceedings before the Community Court in which it acts as an accuser and prosecutor. These cases arise mostly from the failure of the member states to implement Community measures adequately or in time.

It is also provided that a member state may sue another directly *(EEC art.170; Euratom art.142; Coal and Steel art.89)* but the procedure seeks to avoid such a confrontation. Therefore the complaint must first be passed on to the Commission which will investigate the matter and will try to find a solution. If it falls to do so either the Commission or the complaining state may sue. I am aware of one case only in which a member state sued another one directly *(Case 141 / 78: France v United Kingdom (1979) ECR 2923)*.

The function of the Court in these cases is to declare the legal position and thus bring the erring state back on the path of legality. It is assumed that, motivated by the rule of law, the states will comply with the judgment. Should they fail to do so the Commission may bring another action this time for the declaration that the member state concerned has failed to fulfil an obligation under the Treaty *(EEC art.171; Euratom art.143)*. Such cases are extremely rare. Should a state once more defy the judgement the judicial process would be exhausted, the ultimate solution being a political one.

This is the Achilles heel of the enforcement system because there is no practical way of physical execution of the judgements. Two such examples spring to mind: the wine war between France and Italy in 1975 when France refused to admit Italian wine and the matter was settled by the Commission providing a subsidy to the Italian wine producers for the conversion of their product into industrial spirit. The other is the ''guerre de moutons'' between France and the United Kingdom. Back in 1978 there was a judgement against France (Case 232 / 78: *Commission* v *France* (1979) ECR 2729 and 24, 97 / 80: *Commission* v *France* (1980) ECR 1319) ordering France to remove the obstacles to the importation of sheepmeat from the U.K., but France refused to comply and aid to French sheep farmers was granted. However the ''war'' continues and this summer especially violence by the protesting French farmers prevented the free movement of the product. In the common market based on the free movement of goods there is no excuse for that and the state bears

responsibility for the unlawful behaviour of its citizens. Unless direct diplomacy solves the problem a new case may be brought against France, which is regrettable because it exposes her hypocrisy.

Delegation of Powers to Community Institutions

The duties outlined above impinge upon virtually all aspects of power vested in sovereign states and limit the state's freedom of action traditionally associated with the pursuit of national interests. These interests have to be accommodated within Community interests pursued for the benefit of the collective by the Community institutions.

The Treaties establishing the three Communities together with their amendments and the Accession Treaties fall into a category of their own. They are self-executing treaties in so far as they take effect automatically without the necessity of being transformed into national law. They are not mere contracts between the parties but "treaty-laws" since they establish autonomous international bodies having their own institutions and their own law. They constitute a new legal order in International law embracing the member states and their citizens *(See Case 26 / 62, Van Gend (1963) ECR 1).* This reflects three legal orders interlocked like three intersecting circles: the International law of treaties which gave birth to the Communities, national law of the member states which delegate power to the Community institutions and resulting therefrom the autonomous legal order of the Community. Such configuration marks in the first place the impact on the national constitutions.

This impact permeates the whole national legal system, both public and private.

In order to establish the Community structure and to enable the institutions to function the member states had to delegate portions of their sovereignty for that purpose. Countries whose constitutions do not have the necessary mechanism *(i.e. countries which subscribe to the dual concept of law)* have to change their constitutions or pass special enabling laws in order to undertake the duties inherent in the membership of the Community and to curtail their freedoms of action in specified areas in favour of the institutions.

However once delegated the power cannot be withdrawn (Case 24 / 83: Gewiese v Mackenzie (1984) ECR 874) or, as stated by the Community Court, where the Community has acted within its competence the member states must refrain from taking concurrent action (See for example Case 22 / 70: *Commission* v *Council* (1971) ECR 263, at 274). However, until the Community has claimed its competence by using it the member states are free to act as sovereign states for this is their residual right. Cases 3, 4, 6 / 76: *Officier van Justitie* v *Kramer* (1976) ECR 1279). This is the doctrine of the "occupied field" which in a recent case (Case 60 / 86, *Commission* v *United Kingdom* (1988) 3CMLR 437) prevented Britain from enacting legislation which would extend the number of lighting devices compulsory for motor cars beyond the list comprised in a Community directive. Thus Community law

determines the extent of the legal integration and does not permit the member states to be out of step either by exceeding the limit or failing to reach it.

By virtue of the Treaty and the Act of Accession new members negotiate a package deal the effect of which is that, after the transitional period, they are in the same legal position as the founding members. This is a mixture of constitutional and consequential law for the Treaties, like modern constitutions, reveal a political and an economic charter. In the first place new member states accept, immediately and without reservations, the political structure of the Community, i.e. its constitution enshrined in the founding Treaties. This enables them to participate in the Community institutions and play their part in the Community decision-making process, including the Community legislation. They also accept the international treaties which the Community has made with third countries and the arrangements with international organizations. The former limit their power to negotiate trade agreements in their own right and obliges them to adjust their existing treaties with such countries so as to make them compatible with their Community obligations. The latter may limit their participation in the international organizations in so far as the Community may take their place.

The package deal imports volumes of Community legislation which take effect immediately unless delayed by transitory provisions.

This part of the package can be described as the economic law of the Community i.e. rules, rooted in the founding Treaties, which govern the regulation of trade and the economic activities whether of public bodies or private corporations and individuals coming within the concept and scope of the common market. It also includes certain procedural rules such as the rules for the investigation of breaches of Community competition law and the rules for references to the European Community Court from the national jurisdiction and for the enforcement of the judgments of the Community Court as well as the decisions of the Commission entailing fines and penalties.

Provisions have also to be made for the implementation of future Community legislation. There are two kinds of such legislation: regulations i.e. rules which have an immediate and unconditonal effect and directives which do not have the same effect. Therefore regulations, in theory, do not require any specific incorporation into the national system. However they may necessitate the repeal or amendment of the national law and, therefore, the legislature has to act accordingly. Even if they constitute a new body of law it is expedient, at least for the sake of good order, to put them onto the statute book according to the national procedure.

The efficacy of the regulations is well illustrated by a case involving the payment of a premium in respect of slaughtered dairy cows (Case 93 / 71: *Leonesio* v *Italian Ministry of Agriculture* (1972) ECR 287 at 295). In order to reduce the milk production and also phase out small dairy farmers the Community, by a regulation, provided for the payment of a premium to dairy farmers if they had their cows slaughtered. The premium was to be paid by the national authorities but Italy failed to implement the regulation and,

therefore, the authorities were unable to pay. However the Community Court held that the farmer who fulfilled the conditions of the regulation had a right against the state and this right did not depend upon the implementing national legislation. Therefore Italy was in default because she failed to meet her obligation. The inefficiency of the national apparatus provided no defence (Case 39 / 72: *Commission* v *Italy* (1973) ECR 101).

Directives are chiefly the instrument of the harmonization of national laws. They are like commands issued to the member states telling them to achieve a certain objective, e.g. to introduce Value Added Tax, but leaving them the choice of the method to achieve the prescribed result. Unlike regulations, directives have in principle no direct effect as far as the individuals are concerned. They impose obligations upon the member states to which they are addressed which must be discharged by proper legislation. Therefore mere administrative implementation, e.g. circulars, which can be changed at any time by the national bureaucracy will not suffice (Case 239 / 85: *Commission* v *Italy*, re toxic and dangerous waste (1988) ICMLR 248). Failure to implement constitutes a breach of the Treaty.

Individual rights, on the other hand, are created only by those directives which expressly provide for such rights without further enactment like, e.g. the directives harmonising the nursing profession (See Case 29 / 84: *Commission* v *Germany*, re nursing directive (1986) 3CMLR 579). However even those directives which do not create subjective rights may provide a defence to prosecution under national law which is inconsistent with a directive (See Case 148 / 78: *Pubblico Ministero* v *Ratti* (1979) ECR 1629). It follows that member states cannot rely, as against individuals, on their own failure to implement a directive (See the judgement of the *French Conseil d'Etat* in *Compagnie Alitalia* (1990) ICMLR 248).

The shock administered to the national legal system upon accession consists of an imposition of autonomous rules common to whole Community but alien and perhaps even difficult to understand because of their nature and origin. However not only the texts but also their interpretation in the form of the persuasive authority of the judgments of the Community Court in previous cases have to be taken on board as a new source of law available to the courts, the state authorities and private parties.

Indeed the Court has proved to be the most effective agent of legal integration. Although it has no legislative function its judgments command not only universal respect but also a law-making effect. Its main impact lies in the sphere of "constitutional law" of the Community and the implementation of Community economic policies where the founding Treaties have been drafted in general terms only and where conflicts between the Community and the member states have to be solved. It has defined the Community as a "new legal order" and elevated the Treaties founding the Communities to the status of basic law. It clarified the position of the Community in its external relations especially as regards the GATT, defined the parameters of Community competence to enter into international trade agreements (Opinion 1 / 79: Re Draft International Agreement on Natural Rubber (1979) ECR 2871) and developed an effective system of judicial control of administrative and legislative

acts of the Community institutions. Whilst defining the relationship between the Community and the member states the Court defined the principles upon which this relationship is based and in this way filled the gaps in the founding Treaties. It also proved to be a champion of individual rights especially in the field of the movement of persons, social security and the exercise of the right of establishment of the professions and of the right to provide services in face of national restrictions. In these areas it insisted on a strict interpretation of duties of the member states and on the right of foreigners to be heard and to be treated on equal terms with their citizens.

Impact Upon Substantive Law

A glance at the EEC Treaty reveals the nature and scope of the economic law, i.e. of the rules which govern the Common Market and the various policies which affect not only the running of the national economy but also relations between private parties be they commercial corporations or private individuals. These include: Customs laws affecting trade within the Common Market and the world at large; immigration rules affected by the free movement of persons; social security; the right of establishment and professional qualifications of self-employed persons; the provision of services and the movement of capital including its effect upon banking and insurance; agriculture; transport; competition; dumping of goods; state aids to industry; state commercial monopolies, taxation, intellectual property, corporations and labour relations, consumer protection, environment, to name the most important areas of the law affected by Community membership. The necessary adjustments and derogations during the transitional period will be negotiated and comprised in the Act of Accession which, judging by precedents, turns out to be a massive volume.

Procedure and Criminal Law

National procedural law is, in principle, left intact though provisions have to be made for the enforcement of Community rules of competition, references to Community Courts and the enforcement of the judgments of the Community Court and of the decisions of the Commission. And so is national criminal law, though it has to be borne in mind that criminal sanctions, especially those which are used to enforce trade and market regulations, must not contravene Community law (see e.g. Case *Redmond* v *Pigs Marketing Board*...).

Relationship Between Community Law and National Law

In theory Community law forms an integral part of the national system and has to be applied as such by the national authorities. In reality, however, it has to be applied as an autonomous system uniformly in the whole Community

not only to safeguard its integrity but also to ensure that its integrationist force is not spent in the vagaries of national practices. In this respect one has to bear in mind that the principal function of the Community Court is to "ensure that in the interpretation and application of the Treaty the law is observed" (*EEC art.164; Euratom art.136; Coal and Steel art.31).*

This means that the Court not only exercises a judicial control over the Community institutions and over the member states in conformity with the principle of legality but also has a duty similar to that of the supreme court of a federation of supervising the administration of justice in the state members of the federation. However the Community is not yet a federation and the Community Court is not a federal court a with direct authority over the judiciaries of the member states. It has, though, an indirect authority inasmuch as the courts form part of the machinery of the state and the state is responsible for their behaviour within the sphere of its obligations towards the Community, the control of such obligations being within the power of the Community Court. (*See Case 77 / 69: Commission* v *Belgium* (1970) ECR 237). Another form of supervision is exercised through the machinery of reference for preliminary rulings which will be considered later.

In the circumstances it fell to the Community Court to define the principles which govern the relationship between the Community law and national law. These principles, i.e. autonomy, direct applicability and supremacy of Community law, do not rest upon express provisions of the founding Treaties but, emanating from judicial logic, they provide a practical guide to the relations between the two systems. All three can be traced back to the Van Gend Case (*Supra*) where the Court had to explain the nature of the EEC Treaty and its effect upon the customs law of a member state.

The principle of the autonomy of Community law means that it is quite independent of the legislation passed by the member states (*Case 28 / 67: Mölkerei Zentrale* (1968) ECR 143) and has to be interpreted and applied uniformly throughout the Community. Since the Community and the member states perform different functions the efficacy of the Treaty would be impaired if, in the context of partial integration with national law, the specific tasks entrusted to the Community were not interpreted as totally independent. It means, in practical terms, that e.g. in the field of competition when the two systems overlap national authorities have to apply Community law to the extent to which it overlaps with national law but are free to apply national law in areas which are not covered by Community law (*Case 14 / 68: Wilhelm (1969) ECR 1*). In this way the integrity and the unity of Community law within the entire Community is safeguarded whilst anything outside its domain is left to a free disposition of the member state.

An analysis of the Treaties and Community legislation reveals that certain provisions are self-executing, i.e. directly applicable, whereas others represent a programme or a policy which have to be transformed into particular rules of law. There is also the whole host of Community directives which have to be implemented. These are binding upon the state as they are addressed to

the state compelling the state to carry out its obligation in the field of legislation but they do not necessarily create rights before so implemented. By contrast directly applicable rules take force in the territory of the member states without further enactment and, in this respect, constitute directly enforceable Community rights which can be relied on by the citizen. To illustrate this concept: In the Van Gend Case (*supra*) the Community Court held that there was an unconditional obligation on the part of the member state to refrain from introducing new customs duties which, in turn, created a corresponding right in favour of the importer. In another case (*57 / 65: Alfons Lutticke (1966) ECR 205*) the Court ruled that a member state must not impose on the product of another member state any internal tax in excess of the tax levied on similar domestic product. In yet another case (*2 / 74: Reyners* v *Belgium (1974) ECR 631*) a Dutch national qualified as a lawyer in Belgium was held to have a right to practise his profession in Belgium notwithstanding the requirement that only Belgium nationals could be admitted to legal practice. The principle was reiterated in many cases and perhaps in the most striking manner in the second Simmenthal case (*106 / 77, (1978) ECR 629*) where it was linked with the principle of supremacy, the Community Court stating that a directly applicable Community rule takes precedence over the national legislation whether antecedent or subsequent to the relevant Treaty provision.

As can be seen the principle of direct applicability addressed legislators and judges is the criterion of individual rights rooted in Community law which the legislator ought to respect and the judge must uphold. Case law suggests that in order to be directly applicable the provision of Community law must impose on the member state a clear and precise obligation; it must be unconditional, i.e. not accompanied by any reservation and the application of the Community rule must not be conditional upon any subsequent legislation whether of the Community institutions or of the member states (*Advocate-General Mauras in case 41 / 74: Van Duyn (1974) ECR 1337*).

As mentioned earlier the principle of supremacy of Community law is closely linked with the principle of direct applicability. It has been deduced by the Community Court not so much from the provisions of the founding Treaties as from the constitutions of the member states and the federal concept of the Community. It was first mentioned in the Van Gend case (*supra*) to solve the problem of a conflict between the Treaty and national customs law. It was firmly established in Costa v ENEL (*Case 6 / 64 (1964) ECR 585*) a case concerning *inter alia* the question whether Italian law nationalizing the electricity industry was compatible with the EEC Treaty. The Community Court held that the Treaty has created its own legal system which, on the entry into force of the Treaty, became an integral part of the legal systems of the member states and which their courts were bound to apply. Because of its special and original nature it could not be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question. Commenting specifically on the impact of the Community upon national legislation the Court said that "the transfer by the states from their domestic

legal system to the Community legal system of rights and obligations arising under the Treaty carries with it a permanent limitation of their sovereign rights, against which a subsequent unilateral act incompatible with the concept of the Community cannot prevail''. Addressing itself to the national judicature the Community Court ruled in the Simmenthal case cited above that ''a national court which is called upon to apply provisions of Community law is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation and it is not necessary for the court to request or await a prior setting aside of such provision by legislative act or other constitutional means''. This should not be read as an attempt to incite the national judiciary to rebellion but to re-state the principle of state duty under the Treaties to adjust it machinery, both legislative and judicial, to the obligations arising from the membership of the Community and to remind of the federal concept of the Community. Indeed, if national legislature could override Community law or if national courts could disregard Community law when in conflict with their own, this would be the end of the Community as a supra national organization. It should not be surprising, therefore, that Community law should prevail even if ''it is alleged that the basic rights guaranteed by the national constitution were violated'' (*Case 11 / 70: Internationale Handelgesellschaft (1970) ECR 1125*). This statement, in a case involving a spurious claim that an agricultural regulation had violated the principles of the Grundgesetz, had initially upset the Germans but now (*Re the Application of Wünsche Handelgesellschaft (1987) 3CMLR 225*) they admit that even in that area references to the Community Court are acceptable.

Though the Community Court has no power to strike down national legislation it can achieve practically the same result through the principle of supremacy by declaring such legislation ''incompatible with the Treaty''. The message in such a case is for the state concerned to amend its laws under the pain of prosecution by the Commission for a breach of the Treaty.

Cases involving between Community law and national law come often before the Community Court by virtue of the procedure for a preliminary ruling (*EEC art.177; Euratom art.150; Coal and Steel art.41*) which constitutes a bridge between the Community and the national jurisdictions. This enables the national courts to refer for interpretation points of law arising in the course of application by them of the Community Treaties, the Community legislation and of the acts of bodies established by the Council. It should be borne in mind that this procedure does not establish a right of recourse to the Community Court but a machinery available to national courts whereby they obtain an authoritative interpretation of points of law essential for their decision. Thus the rôles of the two jurisdictions are divided: the national court poses the questions which the Community Court answers and then the national court decides the case on the basis of the answers received. Although the procedure for the reference is governed by national rules the power to refer has been given to the national judge by the Treaty directly and this power must not be curtailed or inhibited by national procedures (*Rhein-Mühlen Cases (1974) ECR 33 and (1974) ECR 139*).

According to the Community Court procedure every reference is notified to all the member states and to the Commission as well as the Council if the act which is to be interpreted has emanated from the Council. In this way the matter ceases to be of sole concern to the parties to the dispute and the adjudicating court; it thus becomes of common concern to the member states and the Community institutions which may intervene in the proceedings. As a result the referring court, the institutions and the authorities of the member states obtain the benefit of an authoritative interpretation of the point involved whilst the Commuity system becomes enriched by a judgment which commands a universal attention and contributes to a uniform understaning and application of Community law.

CONCLUSIONS

The law is not the sole prerogative of lawyers but as a profession they are primarily affected by the imposition of Community law upon the national system. They have to learn new rules and acquire new skills. They have to grapple with new and alien ideas, principles and terminology often inadequately rendered by translation. On Malta's accession Maltese will become one of the official languages of the Community and Maltese lawyers will be called upon to play their part.

Government lawyers will be responsible together with the Community bureaucrats for the drafting of the Community legislation. They will have to learn new skills and the art of working together with Community lawyers. They also will advise their Government on the application of Community rules and defend the Government position before the Commission and the Community Court.

Lawyers in commerce and industry will have to be able to advise their clients on a variety of subjects within the whole area of the law of the economy as outlined above and how to obtain grants for industry and development.

Lawyers in private practice will have to be able to advise their clients not only on the relevant aspects of the Community law but also on its effect on the national system in various areas, including criminal law. They ought to gain expertise in "Euro-defences" before the national courts and in the drafting of references to the Community Court. They must also learn how to conduct cases before the Commission and the Community Court.

Judges too must become familiar with the substance and procedural Community law, the distinction between the directly and indirectly applicable Community rules and the techniques of the reference for preliminary ruling. Their authority will not be diminished but the variety of their work will increase.

However there is nothing to be afraid of. An island country which, like a rock in the sea, has survived centuries of foreign domination including the British rule, is well equipped to undertake the obligations arising from the membership of the Community and to play a positive role in the construction of Europe.

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